IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.8998 OF 2004

Mrs. Saroj N. Patil. ...Petitioner.
Vs.
Nuclear Power Corporation of India Ltd.& Ors. ...Respondents.
....
Mr. N. M. Ganguli for the Petitioner.
Ms. L. A. Munim with Mr. H. L. Bhalerao i/b. Rajesh Kothari & Co. for Respondent No.1.
Mr. Y.R. Mishra i/b. Mr. S.S. Sarkar for Respondent Nos.2 and 3.
.....

CORAM : KSHITIJ R. VYAS, C.J. &
DR.D.Y.CHANDRACHUD, J.

April 21, 2006.

ORAL JUDGMENT (Per Dr. D.Y. Chandrachud, J.):

Rule. By consent of Counsel, returnable forthwith. At the request of and with the consent of all Counsel, taken up for final hearing.

The Petitioner joined the services of the First Respondent at the Tarapur Atomic Power Station as a Lower Division Clerk on 20th September 1990. The appointment of the Petitioner was on compassionate grounds since it has been stated that her father had died in harness in 1987. The case of the Petitioner is that in the middle of April 2003 she was in a mentally

disturbed state. The Petitioner has averred that this was "on account of (a) character assassination campaign all around including in her office arising out of a misunderstanding that she, a married woman with two children eloped with a younger bachelor colleague though she had gone to Pune with him at his request to help him in a family matter of arranging a marriage alliance for his sister".

2. The Petitioner was absent from duty from 25th April 2003. It has been stated that the Petitioner had to undergo medical treatment physically and psychologically and she was certified to be fit to work by the Civil Surgeon at Thane on 6th November 2003. In the meantime, disciplinary proceedings were initiated against the Petitioner and a chargesheet was issued on 20th May 2003. On 25th June 2003, the Petitioner tendered her resignation from service. The disciplinary authority dropped the disciplinary proceedings and the resignation of the Petitioner was accepted on 27th June 2003. The case of the Petitioner is that after she recovered from a state of mental depression and illness, she approached the First Respondent on 8th November 2003 with a certificate of the Civil Surgeon with a request that she should be

allowed to withdraw her resignation which had been tendered under pressure and in a state of mental sickness. Since this request was not acceded to, the Petitioner approached the Regional Labour Commissioner (Central) on 15th April 2004 by raising an industrial dispute under the Industrial Disputes Act, 1947. The Conciliation Officer declined to intervene by a letter dated 20th April 2004. The Assistant Labour Commissioner (Central) has, by his communication, informed the Petitioner that no cognizance would be taken of the complaint of the Petitioner seeking reinstatement in service “since it is a case of resignation”. This order has been challenged by the Petitioner in these proceedings under Article 226 of the Constitution.

3. On behalf of the Petitioner it has been submitted that in view of the well settled principle of law, it was not open to the Competent Authority in the Ministry of Labour of the Government of India to enter upon the merits of the industrial dispute particularly when a reference to adjudication has been sought under Section 10 of the Industrial Disputes Act, 1947. Hence, it has been submitted that the authority had overstepped the limits of its jurisdiction by entering upon the merits of the claim of the

Petitioner, inasmuch as the claim was neither stale nor patently frivolous within the meaning of those expressions as explained in judgments of the Supreme Court. On the other hand, on behalf of the Respondents it has been submitted that the resignation of the Petitioner was voluntarily submitted and it came to be accepted by the Competent Authority. The Petitioner thereafter has been paid all her terminal dues including gratuity and Provident Fund. Hence, it was submitted that there was no merit in the contention of the Petitioner.

4. In **Bombay Union of Journalists vs. State of Bombay,** AIR 1964 SC 1617, the Supreme Court enunciated the role and ambit of the jurisdiction of the appropriate Government to refer an industrial dispute to adjudication under Section 10(1) of the Industrial Disputes Act, 1947. Mr.Justice Gajendragadkar, as the Learned Chief Justice then was, speaking for the Bench observed thus:

> ".....it would not be possible to accept the plea that the appropriate Government is precluded from considering even prima facie the merits of the dispute when it decides the question as to whether its power to make a reference should be exercised under Section 10(1) read with Section 12(5), or not. <u>If the claim made is patently frivolous, or is clearly belated, the appropriate</u>

> Government may refuse to make a reference. Likewise, if the impact of the claim on the general relations between the employer and the employees in the region is likely to be adverse, the appropriate Government may take that into account in deciding whether a reference should be made or not. It must, therefore, be held that a prima facie examination of the merits cannot be said to be foreign to the enquiry which the appropriate Government is entitled to make in dealing with a dispute under Section 10(1) ....." (emphasis supplied).

In a subsequent decision in **M.P. Irrigation Karamchari Sangh v. State of M.P.,** AIR 1985 SC 860, the Supreme Court observed thus:

> "There may be exceptional cases in which the State Government may, on a proper examination of the demand, come to a conclusion that the demands are either perverse or frivolous and do not merit a reference. Government should be very slow to attempt an examination of the demand with a view to decline reference and Courts will always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of valid disputes. To allow the Government to do so would be to render Section 10 and Section 12(5) of the Industrial Disputes Act nugatory." (emphasis supplied).

These principles have been reiterated in subsequent decisions including **V. Veeraranjan v. Government of Tamil Nadu,** AIR 1987 SC 695.

5. Therefore, the decided cases demonstrate that a prima

facie consideration of the merits of the dispute is not alien to the jurisdiction which the appropriate Government exercises to make a reference under Section 10(1) of the Industrial Disputes Act, 1947. However, that prima facie evaluation is only with a view to determine whether an industrial dispute exists or is apprehended. Ordinarily, once an industrial dispute exists or is apprehended, it must be left to the Industrial Tribunal to adjudicate upon the dispute. The exception to the rule is couched in a narrow spectrum where the appropriate Government comes to the conclusion that the demand that has been raised is patently frivolous or clearly belated. Otherwise, the whole object of adjudication by Industrial Tribunals would be rendered illusory if the appropriate Government were to launch upon an adjudication of the merits of the dispute.

6. These principles can now be applied to the facts of the present case. In the present case, it is an admitted fact that the Petitioner was proceeded against in a departmental enquiry for absence. According to the Petitioner, it is also admitted that a letter of resignation which was tendered by her came to be accepted. According to the Petitioner, she was suffering from a severe mental depression and illness which arose out of

aspersions which had been cast on her character and reputation in the workplace. The case of the Petitioner is that on 6th November 2003 she was certified to be fit by the Civil Surgeon, Thane and it was immediately thereafter that she sought to withdraw her resignation on the ground that it had been tendered when she was labouring under a mental illness. The Petitioner has, therefore, specifically set up the contention that the letter of resignation was not voluntary. Whether the case of the Petitioner is true or otherwise, whether it is worthy of acceptance or not, is not a matter for this Court to consider at this stage. The issue is yet to be decided by the competent industrial forum. Having regard to the nature of the case set up by the Petitioner, it cannot be possibly submitted that an industrial dispute within the meaning of 2(k) does not arise, nor for that matter can it be said that this case falls in an exceptional category or class where the demand is patently frivolous or clearly belated.

7. On behalf of the Respondents, reliance was placed on a judgment of a Division Bench of the Himachal Pradesh High Court in **Lok Nath Attri v. State of H.P.,** 2001-II LLJ 1084. That was a case where a demand for a reference came to be rejected by the

Labour Commissioner on the ground that the Petitioner had resigned from service and had received his terminal dues. That case is however, distinguishable for the simple reason that there was no dispute about the fact that the resignation was voluntary and in fact, as the Division Bench noted, the Petitioner had himself stated that he had resigned in order to contest an election. The facts therefore, are clearly distinguishable.

8. In these circumstances, we are of the view that the appropriate Government was clearly in error in declining to make a reference under Section 10(1) of the Industrial Disputes Act, 1947.

9. We, therefore, quash and set aside the impugned order dated 20th April 2004. We direct the Union of India through the Ministry of Labour, which is impleaded as the Third Respondent to these proceedings, to make a reference to adjudication before the Industrial Tribunal under Section 10(1)(d) of the Industrial Disputes Act, 1947 within a period of four weeks of the date of receipt of this order. However, while disposing of this petition, we once again clarify that nothing contained in this order would come in the way of the Industrial Tribunal disposing of those proceedings on merits

after hearing the parties. The petition is allowed in the aforesaid terms. There shall be no order as to costs.

CHIEF JUSTICE

Dr.D. Y. Chandrachud, J.